

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ethan Waterman	Team: Squad #10	CCRB Case #: 202103678	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/17/2021 11:11 PM	Location of Incident: In front of § 87(2)(b) in Brooklyn	18 Mo. SOL 12/17/2022	Precinct: 77		
Date/Time CV Reported Fri, 06/18/2021 12:06 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 06/18/2021 12:06 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Joshua Navarro	16066	957891	PBBN SU PST
2. SGT Gabriel Cuevas	00000	945633	PBBN SU PST
3. PO Andrew Tofalli	26431	955584	PBBN SU PST

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Joseph Howard	17787	960683	PBBN SU PST
2. SGT James Mcsherry	03934	942175	PBBN SU PST
3. LT SA Forrest Hirsch	00000	941905	PBBN SU PST

Officer(s)	Allegation	Investigator Recommendation
A . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro stopped § 87(2)(b)	§ 87(2)(b)
B . PO Joshua Navarro	Force: Police Officer Joshua Navarro pointed his gun at § 87(2)(b)	§ 87(2)(b)
C . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
D . PO Joshua Navarro	Discourtesy: Police Officer Joshua Navarro spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E . PO Andrew Tofalli	Abuse: Police Officer Andrew Tofalli frisked § 87(2)(b)	§ 87(2)(b)
F . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro frisked § 87(2)(b)	§ 87(2)(b)
G . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro searched § 87(2)(b)	§ 87(2)(b)
H . SGT Gabriel Cuevas	Discourtesy: Sergeant Gabriel Cuevas spoke discourteously to § 87(2)(b)	§ 87(2)(b)
I . SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas frisked § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
J . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro frisked § 87(2)(b) [REDACTED]	[REDACTED]
K . PO Joshua Navarro	Abuse: Police Officer Joshua Navarro failed to provide § 87(2)(b) [REDACTED] with a business card.	[REDACTED]
L . PO Andrew Tofalli	Abuse: Police Officer Andrew Tofalli failed to provide § 87(2)(b) [REDACTED] with a business card.	[REDACTED]
M . SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas failed to provide § 87(2)(b) [REDACTED] with a business card.	[REDACTED]
§ 87(2)(g), § 87(4-b) [REDACTED]	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b) [REDACTED]	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b) [REDACTED]	[REDACTED]	[REDACTED]

Case Summary

On June 18, 2021, both § 87(2)(b) and § 87(2)(b) filed this complaint through the CCRB's website. On June 30, 2021, § 87(2)(b) filed a duplicate complaint § 87(2)(b) through the CCRB's website.

On June 17, 2021, at approximately 11:11 p.m., Police Officer Joshua Navarro of the Patrol Borough Brooklyn North Public Safety Team chased after § 87(2)(b) and ultimately stopped him in front of § 87(2)(b) in Brooklyn (**Allegation A, Abuse of Authority: Stop, § 87(2)(g)**). While in pursuit, PO Navarro pointed his gun at § 87(2)(b) and said, "Stop or I will shoot!" (**Allegation B, Force: Gun Pointed, § 87(2)(g)**) (**Allegation C, Abuse of Authority: Threat of Force (Verbal or Physical), § 87(2)(g)**). While handcuffing § 87(2)(b) PO Navarro said, "Give me your fucking hands now!" (**Allegation D, Discourtesy: Word, § 87(2)(g)**). Police Officer Andrew Tofalli of the Patrol Borough Brooklyn North Public Safety Team frisked § 87(2)(b) (**Allegation E, Abuse of Authority: Frisk, § 87(2)(g)**). PO Navarro frisked and searched § 87(2)(b) (**Allegation F, Abuse of Authority: Frisk, § 87(2)(g)**) (**Allegation G, Abuse of Authority: Search (of person), § 87(2)(g)**). Sergeant Gabriel Cuevas of the Patrol Borough Brooklyn North Public Safety Team told § 87(2)(b) "Don't talk shit to me" (**Allegation H, Discourtesy: Word, § 87(2)(g)**). Sgt. Cuevas frisked § 87(2)(b) before placing him in an unmarked vehicle (**Allegation I, Abuse of Authority: Frisk, § 87(2)(g)**). PO Navarro frisked § 87(2)(b) again before releasing him (**Allegation J, Abuse of Authority: Frisk, § 87(2)(g)**). PO Navarro, PO Tofalli, and Sgt. Cuevas failed to offer § 87(2)(b) a business card (**Allegations K, L, and M, Abuse of Authority: Failure to Provide RTKA Card, § 87(2)(g)**).

§ 87(2)(g), § 87(4-b)

The investigation interviewed § 87(2)(b) and § 87(2)(b) as witnesses.

No summonses or arrests resulted from this incident.

The investigation received body-worn camera (BWC) footage from Sgt. Cuevas, Lieutenant Forrest Hirsch, Police Officer Joseph Howard, Sergeant James McSherry, PO Navarro, and PO Tofalli (**BR 01-08**). The relevant aspects of this footage shall be discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Joshua Navarro stopped § 87(2)(b).

It was undisputed that PO Navarro stopped § 87(2)(b).

§ 87(2)(b) declined to provide a statement to the CCRB (**BR 09**).

Per PO Navarro's first BWC (**BR 01**), PO Navarro's video begins with the officer sitting in the passenger seat of a vehicle parked on the northwest corner of Classon Avenue and Park Place in Brooklyn. At the 00:21 timestamp, PO Navarro exits his vehicle and walks toward the northeast corner of Classon Avenue and Park Place, adjacent to the Downtown Brooklyn Nursing and Rehabilitation Center. There is a wheelchair accessibility ramp at the rehabilitation center, approximately six-to-eight car lengths away from the northeast corner of Classon Avenue and Park Place. Classon Avenue is apparently comprised of two parking lanes, a bike lane, and a traffic lane. At the 00:31 timestamp, PO Navarro starts running after § 87(2)(b) proceeding northbound on Classon Avenue. § 87(2)(b) is not immediately visible in the frame. PO Navarro arrives at the southeast corner of Classon Avenue and Prospect Place at the 00:45 timestamp — § 87(2)(b) is not visible. PO Navarro ultimately chases § 87(2)(b) across the intersection to the northwest corner, holding his gun pointed (see **Allegations B and C**). At the 00:58 timestamp, § 87(2)(b) falls to the ground under his own power and PO Navarro begins to handcuff him.

In his CCRB interview (**BR 10**), PO Navarro said that he was sitting in the passenger seat of his police car on the northwest corner of Park Place and Classon Avenue in Brooklyn while his partner, PO Tofalli, went inside a bodega to get some water. There were streetlights illuminating the street. It was a hot June night. PO Navarro could not approximate the temperature. PO Navarro saw a person wearing a ski mask, a black winter bubble coat (PO Navarro approximated the coat to be waist-length, but was unsure), and sweatpants. The person's clothing got PO Navarro's attention given that it was a hot night. PO Navarro thought, "That's weird, but whatever." PO Navarro did not know where the person's hands were at that moment. PO Navarro continued to sit in his car and wait for PO Tofalli.

§ 87(2)(b) started to walk westbound from the northeast corner of Park Place and Classon Avenue towards PO Navarro's car. Right before § 87(2)(b) crossed the street, § 87(2)(b) looked at PO Navarro's car. § 87(2)(b) noticed that PO Navarro was a police officer – PO Navarro noted that § 87(2)(b) may have seen PO Navarro's patch on his shirt and that PO Navarro's car was a "dead giveaway" that he was a police officer. Upon realizing that PO Navarro was a police officer, § 87(2)(b) changed his path of travel. PO Navarro, at this point, thought, "Okay, that's a little bit strange." PO Navarro thought, "Why did he avert away from us?" but noted that "there's a million reasons" why he did so. PO Navarro continued to observe § 87(2)(b) walked away from PO Navarro's car across the street from the side that PO Navarro was parked. PO Navarro saw that § 87(2)(b) kept looking back towards PO Navarro and his car. PO Navarro made eye contact with § 87(2)(b) walked to a building that had a switchback wheelchair accessibility ramp. It was dark in this area. PO Navarro believed the building was some sort of medical facility. § 87(2)(b) faced toward the railing by the wheelchair accessibility ramp. PO Navarro could see § 87(2)(b) back. § 87(2)(b) looked over his shoulder. § 87(2)(b) dropped his hands and it appeared that § 87(2)(b) was "doing something around his waist and readjusting and he keeps looking back while he's doing it." PO Navarro, thought, "Now, that's very strange to me." To this point, PO Navarro had observed § 87(2)(b) for no more than a couple minutes.

PO Tofalli got back in the car. PO Navarro explained to PO Tofalli, "Yo, I don't know what this guy was doing, but he's dressed really warm when it's already hot out – it's a summer night. When he saw the car, he kinda diverted his attention away. He's wearing a ski mask, which, again, you know, the pandemic's going on, of course you have to wear your face mask at that point – but again, it's a ski mask. To me, most of the people around are wearing cloth masks that doesn't cover your entire face, because, again, it's warm out, it's summertime. Again, coat with long sleeves and long pants that looked like sweatpants from where I was." PO Navarro told PO Tofalli, "Look man, I'm gonna get out and just talk to this guy and approach him and see what's going on, you know. He's just acting strange."

PO Navarro walked up to § 87(2)(b) to speak with him. PO Navarro did not see any outlines on § 87(2)(b) clothing at this point. As PO Navarro approached, he was thinking, "maybe this guy turned – he's peeing or something like that but I'm going to get a closer look because it's my job, right?"

When § 87(2)(b) saw PO Navarro step onto the sidewalk and walk towards him, § 87(2)(b) grabbed his waistband and started running as fast as he could while holding his waistband. Because of the way § 87(2)(b) had to pick up the front of his jacket/upper hip area, PO Navarro asked himself, "What is that? What did he just grab and run away from me?" PO Navarro thought that the item in the waistband could have been a firearm, a weapon, or something else that § 87(2)(b) wanted to hide, given the apparent weight of the object and § 87(2)(b) holding the object. PO Navarro could not see any outlines of any items on § 87(2)(b) person, because § 87(2)(b) had turned away from PO Navarro.

Given the way that § 87(2)(b) was dressed (that he was covered up and wearing a ski mask), the way that he diverted his direction of travel upon seeing PO Navarro, and the way that § 87(2)(b) was adjusting his waistband, PO Navarro was wondering whether § 87(2)(b) had

been planning to go into the bodega to try to rob someone.

PO Navarro prepared a stop report regarding this incident (BR 11). PO Navarro wrote the following in the report's narrative regarding the circumstances that led to the stop: "at tpo r/o did observe subject wearing uncharacteristically warm clothing for the temperature outside (large bubble coat, several pairs of sweatpants, and a ski mask). when subject noticed r/o observing him, he bladed body away from r/o and abruptly changed his course of travel. subject appeared nervous and looked over shoulder at r/o while continuing away from r/o's position. subject then doubled back and leaned on a banister of a nearby accessibility [sic] ramp and adjusted waistband while facing wall of building. object in subjects pants seemed bulky and heavy and r/o believed that subject was concealing a firearm."

As written in *People v. Rhames*, 196 A.D.3d 510 (BR 12), "in order to justify police pursuit, the officers must have reasonable suspicion that a crime has been, is being, or is about to be committed. Reasonable suspicion is that quantum of knowledge sufficient to induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is at hand. Relevant factors include, among others, the substance and reliability of the report that brought the officers to the scene, the nature of the crime that the police are investigating, the suspect's behavior and the shape, size, and location of any bulges in the suspect's clothing. A suspect's flight alone even his or her flight in conjunction with equivocal circumstances that might justify a police request for information, is insufficient to justify pursuit. When combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, however, a suspect's flight may provide the predicate necessary to justify pursuit." The court further noted that a "police request for information" must be justified by an objective, credible reason that may not be necessarily indicative of criminality."

Per *People v. Crawford*, 89 A.D.3d 422 (BR 13), an individual's flight, "when accompanied by nothing more than the presence of an object in his pocket that was unidentifiable even at close range, [does] not raise a reasonable suspicion that [they have] a gun or otherwise [is involved] in a crime." In the circumstance ruled upon in this case, officers described seeing an apparently heavy bulge in the defendant's pocket.

PO Navarro saw § 87(2)(b) wearing an unseasonably warm outfit, saw him change his direction of travel upon making eye contact with PO Navarro, and saw him walk away. PO Navarro acknowledged that these factors, when considered alone or in conjunction, are innocuous absent other indicia of criminal activity.

PO Navarro saw § 87(2)(b) walk up to a dark area next to an accessibility ramp and saw § 87(2)(b) "doing something around his waist and readjusting and he keeps looking back while he's doing it." The investigation, through the use of the New York City Department of Planning's digital Zoning and Land Use map (BR 43), determined that § 87(2)(b) was approximately 70 feet away from PO Navarro's car when he allegedly did "something around his waist" while "looking back." Given the distance between § 87(2)(b) and PO Navarro, the darkness of the area where § 87(2)(b) was allegedly standing, and the generality of what PO Navarro allegedly observed, § 87(2)(b) § 87(2)(g)

PO Navarro did not see any bulges on § 87(2)(b) person prior to approach. PO Navarro told PO Tofalli that he was going to approach § 87(2)(b) because he was acting strange and told the investigation that he approached § 87(2)(b) because it was his job. § 87(2)(g)

Furthermore, PO Navarro's suspicion that § 87(2)(b) could be about to commit a robbery was speculation not supported by his observations or other factors. § 87(2)(g)

PO Navarro said that when § 87(2)(b) ran away, § 87(2)(b) grabbed his waistband and started running as fast as he could while holding his waistband. Because of the way § 87(2)(b) had to pick up the front of his jacket/upper hip area, the weight of the object, and § 87(2)(b)

§ 87(2)(b) holding the object, PO Navarro thought that § 87(2)(b) may have had a firearm, weapon, or other contraband. § 87(2)(g)

Allegation (B) Force: Police Officer Joshua Navarro pointed his gun at § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Joshua Navarro threatened § 87(2)(b) with the use of force.

It was undisputed that PO Navarro pointed his gun at § 87(2)(b) while chasing after him.

At the time of this incident, the following people were at § 87(2)(b) in Brooklyn, which faces northward towards Prospect Place: § 87(2)(b) § 87(2)(b) and § 87(2)(b) (BR 14) saw PO Navarro chasing after § 87(2)(b) with his gun pointed. § 87(2)(b) heard PO Navarro say, “Stop running, I’m going to shoot you!” § 87(2)(b) (BR 15) said that she saw PO Navarro running on the street and heard him yell, “I’m going to kill you!” and “I’m going to shoot you!” at § 87(2)(b) (BR 16) told the investigation that they heard someone say, “Stop! I’m going to shoot you!” § 87(2)(b) (BR 17) heard a male voice yell, “If you don’t stop running, I’m going to shoot you!” and “I’m going to kill you!”

§ 87(2)(b) (BR 18) was walking towards her home in Bedford-Stuyvesant when she heard a pair of men running behind her. § 87(2)(b) saw § 87(2)(b) running with PO Navarro running directly behind. When § 87(2)(b) first saw PO Navarro, PO Navarro was just holding his gun. PO Navarro was not saying anything at this point. About one second later, PO Navarro unholstered and pointed his gun. § 87(2)(b) ran in the same direction as § 87(2)(b) and PO Navarro, with both of them behind her, because she saw the gun. § 87(2)(b) believed that she was in the “line of fire” when PO Navarro pointed his gun but was not sure. PO Navarro then yelled, “If you don’t stop running, I’m going to shoot you!” to § 87(2)(b) ran faster once PO Navarro made this statement. § 87(2)(b) looked behind her and saw that § 87(2)(b) was on the ground and PO Navarro was above him and pointing the gun at § 87(2)(b)

In his CCRB interview (BR 10), PO Navarro said he pulled out his gun and pointed it at § 87(2)(b) after § 87(2)(b) ducked low behind parked cars at the corner of Prospect Place and Classon Avenue. PO Navarro thought, “What is this guy doing? Is he taking cover?” PO Navarro asked himself whether § 87(2)(b) was taking cover to turn around and shoot at PO Navarro.

Per PO Navarro’s first BWC (BR 01), which is without audio during this portion, § 87(2)(b) position is unclear between the 00:35 and 00:51 timestamps. This is due in part to PO Navarro’s running, the video’s resolution, and that § 87(2)(b) changes direction at some point. PO Navarro points his gun at § 87(2)(b) starting at the 00:51 timestamp. At this moment, § 87(2)(b) runs away from PO Navarro, running northbound through the crosswalk at Classon Avenue and Prospect Place. § 87(2)(b) turns eastbound on the north side of Prospect Place, continuing to run away from PO Navarro. PO Navarro still points his gun at § 87(2)(b) At the 00:56 timestamp, a female bystander becomes visible, standing on the sidewalk approximately two car-lengths behind § 87(2)(b) At the 00:57 timestamp, § 87(2)(b) falls to the ground and the woman runs away, eastbound on Prospect Place, on the left side of the screen. PO Navarro points his gun at § 87(2)(b) until he apparently holsters it at the 01:00 timestamp.

In his CCRB interview (BR 10), PO Navarro said he pointed his gun because of the way § 87(2)(b) had taken cover, the way that he had grabbed at the object near his waistband, and the way that he had run away. As PO Navarro suspected that § 87(2)(b) was hiding a firearm and

that it appeared that § 87(2)(b) was taking cover, PO Navarro believed that he needed to have his gun pointed so he would be able to return fire if § 87(2)(b) shot at him. § 87(2)(b) darted across Prospect Place away from PO Navarro. PO Navarro was running after § 87(2)(b) and yelling at him to stop. PO Navarro “cut off” § 87(2)(b) diagonally. PO Navarro caught up to § 87(2)(b) to the point that he was within a couple feet of § 87(2)(b). PO Navarro was yelling at § 87(2)(b) letting § 87(2)(b) know that PO Navarro was the police and that he needed to stop. PO Navarro did not remember his exact words.

PO Navarro did not remember specifically saying, “I’m going to shoot you” but said that it was possible that he said something along the lines of, “Stop or I will shoot,” or “Police! Stop or I will shoot.” PO Navarro may have said such a thing because he believed § 87(2)(b) to possess a firearm, because § 87(2)(b) had just appeared to take cover from PO Navarro, and because § 87(2)(b) continued to evade and run away from PO Navarro. PO Navarro may have said such a thing because he wanted to get his point across that § 87(2)(b) needed to stop and that it was urgent that he stop. PO Navarro, in responding to a question from Inv. Waterman regarding whether he would have been justified to discharge his firearm if § 87(2)(b) had continued running, said the following: “The only thing that I would say regarding that is I’m glad that didn’t happen. Whether he had a gun or not, I’m glad – I don’t want to shoot anybody. I’m glad it didn’t happen. So, I’m not gonna, you know, answer a hypothetical question. We have our force guidelines, and what we’re allowed to do and what we’re not allowed to do. I’m glad that I didn’t have to get to that level that night. That’s not something I aspire to or celebrate or anything like that. I don’t need to double my money. I’m okay, I’m good. I don’t need to do anything like that. I will if I have to, but, you know, I don’t even want to think about something like that, quite frankly.”

PO Navarro did not know if there were any bystanders or people on the sidewalk while he chased § 87(2)(b) – he noted that his attention was primarily on § 87(2)(b). PO Navarro did not recall seeing anyone in the vicinity of § 87(2)(b) while he was running away and did not recall seeing anyone in the vicinity of § 87(2)(b) when he reviewed his BWC – he again noted that his attention was focused on § 87(2)(b). PO Navarro never pointed his gun at anyone other than § 87(2)(b).

Per Patrol Guide Procedure 221-01 (BR 19), members of service must consider the following criteria regarding the reasonable use of force: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, and/or bystanders; whether the subject is actively resisting custody; whether the subject is attempting to evade arrest by flight; number of subjects in comparison to the MOS; subject’s violent history, if known; presence of hostile crowd or agitators; subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Per Patrol Guide Procedure 221-01, members of service “**SHALL NOT** discharge a firearm when, in the professional judgment of a reasonable member of the service, doing so will unnecessarily endanger innocent persons,” and “**SHALL NOT** discharge firearm to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to the MOS or another person present.

Per Patrol Guide Procedure 221-01, “Drawing a firearm prematurely or unnecessarily limits a uniformed member of the service’s option in controlling a situation... the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. Members of the service, when feasible, should issue an appropriate verbal warning, consistent with personal safety, to the intended subject and other members of the service present prior to discharging a firearm.”

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Discourtesy: Police Officer Joshua Navarro spoke discourteously to § 87(2)(b)

This allegation stems from PO Navarro's first BWC (BR 01). At the 01:15 timestamp, while PO Navarro crouches above § 87(2)(b) and tries to handcuff him, says, "Put your fucking hands together now!" PO Navarro then finishes handcuffing § 87(2)(b).

In his CCRB interview (BR 10), PO Navarro confirmed that he said, "Put your fucking hands together now." PO Navarro clarified that his direction was for § 87(2)(b) to place his hands together to be handcuffed, because at that time, his hands were not together. PO Navarro also noted that his adrenaline was running high at the time.

Per DAO-DCT Disciplinary Case No. 2013-10143 (BR 20), while officers are held to a high standard of conduct, traditional rules of etiquette, including the prohibition of the use of profanity, cannot be applied to stressful enforcement situations.

Per the NYPD's stated values elucidated in Patrol Guide Procedure 200-02 (BR 21), all members of service pledge to "maintain a higher standard of integrity than is generally expected of others" and to "respect the dignity of each individual and render services with courtesy and civility."

When PO Navarro stopped § 87(2)(b) he believed him to have a firearm and had just concluded chasing him and stopping him at gun point. § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Andrew Tofalli frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Joshua Navarro frisked § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Joshua Navarro searched § 87(2)(b)

Allegation (I) Abuse of Authority: Sergeant Gabriel Cuevas frisked § 87(2)(b)

Allegation (J) Abuse of Authority: Police Officer Joshua Navarro frisked § 87(2)(b)

These allegations stem from BWC.

Per PO Navarro's first BWC (BR 01), at the 01:18 timestamp, PO Tofalli assists PO Navarro in handcuffing § 87(2)(b). PO Navarro tells PO Tofalli, "I haven't searched him yet." Once § 87(2)(b) is handcuffed, PO Tofalli apparently frisks § 87(2)(b) coat. At the 02:10 timestamp, PO Navarro searches § 87(2)(b) front left jacket pocket and asks, "What is this?" PO Navarro then apparently frisks the outermost layer of § 87(2)(b) sweatpants. At the 02:45 timestamp, PO Navarro and PO Tofalli walk § 87(2)(b) towards an unmarked car. At the 03:00 timestamp, § 87(2)(b) stands at the rear right passenger door of the unmarked car when PO Navarro says, "Toss him again." Sgt. Cuevas then walks up and tells PO Navarro and PO Tofalli, "Go." The two walk away from § 87(2)(b).

Per Sgt. Cuevas' BWC (BR 05), at the 01:00 timestamp, Sgt. Cuevas approaches PO Tofalli and PO Navarro as the two frisk § 87(2)(b) next to the unmarked car. Sgt. Cuevas directs the two officers to go and then apparently frisks § 87(2)(b) around the waist area. At the 01:33

timestamp, Sgt. Cuevas tells § 87(2)(b) “I’ve just gotta make sure you don’t have a gun on you, alright?” Sgt. Cuevas finishes his frisk and directs § 87(2)(b) to sit down in the car.

PO Tofalli’s second BWC (BR 07) captures the end of this incident. PO Tofalli removes the handcuffs from § 87(2)(b) at the 01:00 timestamp. Thereafter, PO Navarro for a third time frisks § 87(2)(b). PO Navarro does not explain why he frisks § 87(2)(b).

In his stop report (BR 11), PO Navarro wrote that his basis for a frisk as: “Object observed suspected of being a weapon” and his basis for a search as: “hard object resembling weapon.”

In his CCRB interview (BR 10), PO Navarro said he frisked and searched the area of the § 87(2)(b) clothing where § 87(2)(b) had previously grabbed. PO Navarro located a cell phone and a lighter. PO Navarro noted that he may have frisked and searched § 87(2)(b) again later for the sake of thoroughness: he noted that frisking someone on the ground vs. frisking someone while standing was different given the movement of clothing and different weight distribution incumbent on the different position.

In his CCRB interview (BR 22), PO Tofalli at first said he did not recall whether he frisked § 87(2)(b). Upon reviewing PO Navarro’s BWC, PO Tofalli said that he patted the individual down in pockets in the waist area for weapons. PO Tofalli said that PO Navarro informed him that the individual had not yet been searched (PO Tofalli heard this on the BWC), and thus he patted the individual down in the area where the individual was grabbing earlier.

In his CCRB interview (BR 24), Sgt. Cuevas said he responded to the scene because PO Navarro called a 10-85 regarding the foot pursuit of an individual suspected of possession of a firearm. Sgt. Cuevas said that he understood § 87(2)(b) to be in custody but not under arrest at the time of the frisk. Sgt. Cuevas frisked § 87(2)(b) because he wanted to make sure he had no weapons or contraband prior to his placement inside the police car. Sgt. Cuevas did not recall feeling anything in the pocket while he grasped it.

Per *People v. De Bour*, 40 N.Y.2d 210 (BR 41), officers may frisk an individual only if the officer reasonably suspects that the individual is armed.

Per *People v. Ward*, 161 A.D.3d 520 (BR 42), an officer who feels a hard object in an individual’s jacket pocket may remove the object if they have reason to believe that the individual is armed and that their clothing may conceal a weapon.

§ 87(2)(g)

§ 87(2)(b) Sgt. Cuevas said that he suspected that § 87(2)(b) of possessing a weapon; regardless, § 87(2)(b) had already been frisked by PO Navarro and PO Tofalli with negative results for a weapon. § 87(2)(g)

PO Navarro also did not state that he felt any hard objects he believed to be weapons on § 87(2)(b) person during the frisk. § 87(2)(g)

Allegation (H) Discourtesy: Sergeant Gabriel Cuevas spoke discourteously to § 87(2)(b)

This allegation stems from Sgt. Cuevas’ BWC (BR 05). At the 01:05 timestamp, while Sgt. Cuevas stands with § 87(2)(b) outside a marked vehicle with two other officers, § 87(2)(b) says, “You buggin,’ bro.” Sgt. Cuevas responds, “Don’t talk shit to me, man.”

In his CCRB interview (BR 24), Sgt. Cuevas initially told the investigation that he did not recall whether he ever used any profanity with § 87(2)(b). After reviewing his BWC multiple times and once taking a break to consult with his counsel, Sgt. Cuevas said that his use of profanity in the statement, “Don’t talk shit to me,” was, in his words, “just something that came out” and that his intent was not malicious.

Per DAO-DCT Disciplinary Case No. 2013-10143 (BR 20), while officers are held to a high standard of conduct, traditional rules of etiquette, including the prohibition of the use of profanity, cannot be applied to stressful enforcement situations.

Per the NYPD's stated values elucidated in Patrol Guide Procedure 200-02 (BR 21), all members of service pledge to "maintain a higher standard of integrity than is generally expected of others" and to "respect the dignity of each individual and render services with courtesy and civility."

§ 87(2)(g)

Allegation (K) Abuse of Authority: Police Officer Joshua Navarro failed to provide § 87(2)(b) with a business card.

Allegation (L) Abuse of Authority: Police Officer Andrew Tofalli failed to provide § 87(2)(b) with a business card.

Allegation (M) Abuse of Authority: Sergeant Gabriel Cuevas failed to provide § 87(2)(b) with a business card.

In his CCRB interview (**BR 10**), PO Navarro said that, after frisking and searching § 87(2)(b) (see **Allegations F and G**), he canvassed § 87(2)(b) route of travel for a firearm. PO Navarro did not remember if he had any further interaction with the individual during or after his canvass of the surrounding area. PO Navarro did not believe that he provided § 87(2)(b) with a business card.

In his stop report (**BR 11**), PO Navarro wrote in response to the field, "Business Card Offered to Person Stopped," "Yes."

In neither of PO Navarro's BWCs (**BR 01-02**) does he offer § 87(2)(b) with a business card.

PO Tofalli's second BWC (**BR 07**) captures the end of this incident. PO Tofalli removes the handcuffs from § 87(2)(b) at the 01:00 timestamp. Thereafter, PO Navarro frisks § 87(2)(b). PO Navarro does not explain why he frisks § 87(2)(b). PO Navarro asks § 87(2)(b) at the 01:38 timestamp if § 87(2)(b) wants PO Navarro to explain what happened. § 87(2)(b) responds, but it is unclear if it is in the affirmative or negative. § 87(2)(b) begins to walk away and PO Navarro says, "Have a nice night, bro." Neither PO Navarro nor PO Tofalli offer § 87(2)(b) a business card.

PO Navarro's BWC did not capture this portion of the incident (see **Allegation N**).

In his CCRB interview (**BR 22**), PO Tofalli said that he knew that he was supposed to provide a business card to § 87(2)(b) and believed that he did not do so.

In his CCRB interview (**BR 24**), Sgt. Cuevas said that he did not provide a business card to § 87(2)(b) and did not see any other officers do so.

Per Administrative Guide Procedure 304-11 (BR 25) and New York City Administrative Code 14-174 (BR 26), members of service are to proactively offer a business card to members of the public after the conclusion of a stop, frisk, and search of person except in cases where summonses are issued or arrests are made.

PO Navarro stopped, frisked, and searched § 87(2)(b) but did not offer a business card at the conclusion of the incident as required. PO Tofalli and Sgt. Cuevas frisked § 87(2)(b) but did not offer a business card at the conclusion of this incident as required. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (BR 27).
- This is the first complaint to which § 87(2)(b) has been a party (BR 28).
- This is the first complaint to which § 87(2)(b) has been a party (BR 29).
- This is the first complaint to which § 87(2)(b) has been a party (BR 30).
- This is the first complaint to which § 87(2)(b) has been a party (BR 31).
- This is the first complaint to which § 87(2)(b) has been a party (BR 32).
- PO Navarro has been a member of service for seven years and has been named a subject in nine cases and 31 allegations, six of which have been substantiated.
 - 201808163 involved a substantiated allegation of a frisk. The Board recommended and the NYPD imposed formalized training.
 - 202000571 involved two substantiated allegations of physical force, a frisk, a search (of person), and a stop. The Board recommended charges, which remain pending.
- PO Tofalli has been a member of service for years and has been named a subject in five cases and nine allegations, two of which were cited.
 - § 87(2)(g), § 87(4-b)
- Sgt. Cuevas has been a member of service for 14 years and has been named a subject in 17 cases and 59 allegations, 14 of which were substantiated or cited.
 - 201610447 involved substantiated allegations of a frisk, refusal to provide name/shield number, stop, § 87(2)(g), § 87(4-b). The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - 201804454 involved substantiated allegations of a frisk and search (of person). The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - 201909824 involved substantiated allegations of two frisks, interference with recording, two searches of person, § 87(2)(g), § 87(4-b). The Board recommended Command Discipline B and the NYPD imposed a penalty of the loss of five vacation days.
 - 202100913 involved a substantiated allegation of a failure to provide RTKA card. The

Board recommended Command Discipline A and the NYPD imposed penalty is pending.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of February 15, 2022, the New York City Office of the Comptroller had no record of any Notices of Claim being filed regarding this incident (**BR 33**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

Squad: 10

Investigator:	<u>Ethan C. Waterman</u>	<u>Inv. Ethan Waterman</u>	<u>06/29/2022</u>
	Signature	Print Title & Name	Date

Squad Leader: Maura R. Roche IM Maura R. Roche 06/29/2022
Signature Print Title & Name Date

Reviewer: _____

Signature	Print Title & Name	Date
-----------	--------------------	------